

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

February 11, 2003

Docket No. 2003-81

PUBLIC UTILITIES COMMISSION
Exemption from and Alternative
Reporting Requirements for Chapter
285, Section 2(A) and Chapter 288
Sections 4(D) and 4(G)

EXEMPTION ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we grant certain exemptions to Chapters 285 (Maine Telecommunications Education Access Fund (MTEAF)) and 288 (High Cost Universal Service Fund) of the Commission's Rules. Proposed amendments to both chapters are pending before the Commission in Docket No. 2002-687. The exemptions granted in this Order shall be effective until we complete the pending rulemaking. The first of the two exemptions provides a default method for allocating "jurisdictionally mixed charges." The second provides a method for the exclusion of uncollectible amounts from the intrastate revenue that is subject to assessment by each of the Funds.

II. DISCUSSION

A. Allocation of Jurisdictionally Mixed Charges

1. Interexchange Service

Chapter 288, § 4(D) presently contains a provision that addresses the allocation of "jurisdictionally mixed charges," which are defined as "charges or rates of an IXC, a mobile telecommunications provider or a radio-paging provider that apply on an unseparated basis to both intrastate and interstate service (e.g., minimum monthly bills, with or without a usage allowance.)" The general rule, contained in Section 4(D)(1), states that all such revenues shall be considered intrastate for assessment purposes *unless* a contributing carrier, pursuant to Section 4(D)(2) obtains approval for an allocation method for those mixed revenues. Section 4(D)(2) suggests that minutes of use (MOU) would be an acceptable allocation method. The Notice of Rulemaking in Docket No. 2002-687 proposed to add the identical provision to Chapter 285. Presently, assessments under Chapter 285, § 2(A) apply to "retail charges," which are not defined beyond an exclusion of interstate charges.

Only about five carriers have asked for approval of an allocation method, despite a letter sent by the Director of Finance on November 22, 2002. It was not our intent that assessments for nearly all contributors to the USF would apply to 100 percent of the jurisdictionally mixed charges. It was instead our intent to create a strong incentive to carriers to propose reasonable allocation methods. We believe we can create a similar result with lesser administrative burdens both for carriers and the Commission if we provide a default allocation method that would apply if a carrier does not ask for approval of an alternative method. We will provide such a default method by this Order and intend to consider such a method for both Rules when we consider them at a future deliberative session. It is necessary to take this action now because carriers must report their Fourth Quarter 2002 revenues within a few days.

Until adoption of a permanent allocation methodology in the ongoing rulemaking, contributors (other than mobile telecommunications providers) both to the Maine Universal Service Fund and the MTEAF shall allocate jurisdictionally mixed revenues (as presently defined in Chapter 288, § 4(D)(1)) either pursuant to a method approved by the Commission or the Director of Finance (pursuant to Chapter 288, § 4(d)(2)) or according to the ratio of directly assignable intrastate and total revenues (as explained more fully in the ordering paragraphs). If a contributor uses the latter method, no approval by the Commission or Director of Finance is necessary. The default allocation method for mobile telecommunications providers shall be based on the FCC "safe harbor" method, i.e., 100% minus the interstate portion. Mobile telecommunications providers may use that method without Commission approval or may request from the Commission or the Director of Finance approval to use an alternative method.

This exemption from the provisions of Chapter 285, § 2(A) is granted pursuant to Chapter 285, § 6. This exemption from the provisions of Chapter 288, § 4(D) is granted pursuant to the provisions of Chapter 288, § 6.

2. Local Service

Since the present Rules were adopted, a number of carriers have implemented package rates that include an unseparated charge for intrastate and interstate toll and local service. The present Rules are silent about how to determine what is the local portion, which is definitionally intrastate. The proposed amendments added a reference to this type of rate, but only as something that carriers needed to address in their requests for allocation methods. The NOR suggested that carriers could use their stand-alone rate for local service as a basis for determining the portion of a mixed charge that would be local (and intrastate). The letter sent to carriers by the Director of Finance in November stated that the local portion must be reported as intrastate and proposed that carriers use their stand-alone rate for local service to determine that amount, or if a carrier does not have a stand-alone rate, Verizon's rates. On an interim basis, until we consider this issue in the Rulemaking, we will adopt the

method outlined in the November letter as the default method for determining what portion of unseparated, bundled charges that include local service shall be assigned as local (and intrastate). Contributors may, of course, propose an alternative method for determining the local portion of such charges. To the extent that the present Rules could be read to require a different portion as local, we grant exemptions from the Rules.

B. Provision for Uncollectibles

Presently, assessments under Chapter 288, § 4(C) apply to “all revenues derived from intrastate telecommunications services provided in Maine.”¹ Assessments under Chapter 285, § 2(A) apply to “retail charges,” which, as noted above, are not defined beyond the fact that interstate charges are specifically excluded.

It is not clear from either provision whether assessments apply to billed revenues or to actually collected revenues. In the NOR, we proposed that assessments should apply to billed (i.e., “gross”) revenues. Several commenters objected on various grounds. The Commission staff has indicated that because of the comments, it will propose in the Rulemaking that a factor for uncollectible revenues be allowed for assessment purposes.

Until consideration of the amendments in the Rulemaking, we find it is reasonable to allow such a factor on a temporary basis. It is necessary to take this action now because carriers must report their Fourth Quarter 2002 revenues within a few days. To the extent the Rules could be read to require reporting of, and assessment on, billed revenues, we grant exemptions from both Rules.

Until adoption of a permanent definition of assessable revenues in the ongoing rulemaking, contributors both to the Maine Universal Service Fund and the MTEAF shall report billed intrastate retail revenues (as defined in Chapter 288, § 2(K)), an uncollectible factor (as further defined in the ordering paragraphs) and net assessable revenues.

This exemption from the provisions of Chapter 285, § 2(A) is granted pursuant to Chapter 285, § 6. This exemption from the provisions of Chapter 288, § 4(C) is granted pursuant to the provisions of Chapter 288, § 6.

Accordingly, we

O R D E R

¹ Subsection C specifically includes “revenues derived from rates and charges described in Section 4(D)(1) [i.e., jurisdictionally mixed revenues], subject to the exception contained in Section 4(D)(2),” the exception discussed in Part II.A.1 above.

A. That all carriers and others required to contribute to the Maine Universal Service Fund or the Maine Telecommunications Education Access Fund shall apportion (and report as intrastate and pay assessments on the intrastate portion) those retail charges or rates that apply on an unseparated basis to both intrastate and interstate service provided in Maine (e.g., minimum monthly bills, with or without a usage allowance and bills that combine interexchange and local services) as determined pursuant to the following provisions:

1. For all contributors other than Mobile Telecommunications Providers, retail charges or rates that apply on an unseparated basis to both intrastate and interstate service provided in Maine shall be apportioned between intrastate and interstate service either (1) pursuant to a ratio of retail revenues derived from (a) intrastate telecommunications services provided in Maine that are directly assigned, divided by (b) retail revenues derived from all (intrastate and interstate) telecommunications services provided to customers in Maine that are directly assigned;² or (2) pursuant to an allocation method approved by the Commission or the Director of Finance under Chapter 288, § 4(D)(2);

2. For Mobile Telecommunications Providers, retail charges or rates that apply on an unseparated basis to both intrastate and interstate service provided in Maine shall be apportioned between intrastate and interstate service pursuant to either (1) the “safe harbor” methodology of the Federal Communications Commission for Commercial Mobile Radio Service (CMRS) providers (currently 28.5% interstate)³; or (2) an allocation method approved by the Commission or the Director of Finance pursuant to Chapter 288, § 4(D)(2);

3. For carriers that include local exchange service in an unbundled, unseparated calling plan or rate that also includes interexchange services, the local portion must be reported as intrastate. The portion that is intrastate shall equal the carrier’s stand-alone rate for local exchange service; if a carrier does not have a stand-alone rate, it shall use Verizon’s local exchange service rates for Rate Group F.⁴ (The interexchange portion is then apportioned pursuant to Paragraph 1(A).)

² Directly assigned revenues are those from rates (e.g., per-minute rates applicable to intrastate or interstate calls) that are not “unseparated” or “jurisdictionally mixed.”

³ See *Federal-State Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Report and Order (December 12, 2002) at 13-14.

⁴ A carrier may also use the Verizon rate group applicable in each exchange in which its customer is located or propose to use a composite Verizon rate (e.g., a weighted average of all Verizon rate groups).

B. That all carriers and others required to contribute to the Maine Universal Service Fund or the Maine Telecommunications Education Access Fund shall report all intrastate retail billed revenues (including the intrastate only portion of billed revenues described in Ordering Paragraph 1(A)); the contributor's factor for uncollectibles; and net revenues (billed revenues less billed revenues multiplied by the uncollectible factor). The uncollectible factor for ILECs shall be the same that they report in their most recent annual reports to the Commission. The uncollectible factor for IXC's, CLEC's and Wireless carriers shall be that which they report in their publicly available financial reports to the FCC or the SEC. If an IXC, CLEC or wireless carrier does not produce publicly available financial reports, the company must certify that its bad debt allowance has been approved by its outside auditors.

Dated at Augusta, Maine, this 11th day of February, 2003.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Nugent
 Diamond

COMMISSIONERS ABSENT: Welch

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.